

From: Farren, Victor
To: "Clark, George E."
Subject: RE: FOIA EPA-HQ-2017-008007 / a follow-up question
Date: Monday, October 23, 2017 9:08:00 AM

Dear Mr. Clark,

Please note that FOIAonline automates a number of tasks. Please do not interpret the assignment of a date of completion to mean that the EPA has agreed to process your request as originally phrased.

As I indicated to you in my August 11 communication, your request does not reasonably describe a set of records subject to search as required by the FOIA and EPA regulations. The communication also addressed how you could remedy this deficiency. Your reply to me re-stated the original terms of your request and therefore suffers from the same problem. Please reply to this email within two weeks so that we can discuss how to refine your search. If you are unwilling to modify your request, please let me know so I can issue you a final response closing this request. If I do not hear from you by November 6, 2017 I will assume you are no longer interested in your request and your case will be administratively closed.

Sincerely,

Victor J. Farren
Attorney-Advisor
U. S. Environmental Protection Agency
Office of the Executive Secretariat
(202) 564-0808

From: Clark, George E. [mailto:clark5@fas.harvard.edu]
Sent: Tuesday, October 17, 2017 4:51 PM
To: Farren, Victor <Farren.Victor@epa.gov>
Subject: Re: FOIA EPA-HQ-2017-008007 / a follow-up question

Dear Mr. Farren,

To follow up, I checked FOIA Online, and you have assigned a September 6, 2017 estimated date of completion, so I am pleased to hear that you decided to fulfill the request as originally phrased. However, that date has passed by over a month. May I request that you send the information to me by the end of the week?

Many thanks,
George Clark

From: Clark, George E.
Sent: Tuesday, October 17, 2017 3:58 PM
To: Farren, Victor
Subject: Re: FOIA EPA-HQ-2017-008007

Dear Mr. Farren,

Please let me know the estimated date of completion of this request. I sent the correspondence below on September 18, 2017, but I have not heard back from you.

Many thanks,
George Clark

From: Clark, George E.
Sent: Monday, September 18, 2017 4:55 PM
To: Farren, Victor
Subject: Re: FOIA EPA-HQ-2017-008007

George E. Clark
P.O. Box 381006
Cambridge, MA 01775

September 18, 2017

Victor J. Farren
Attorney-Advisor
Office of the Executive Secretariat, Mailcode 1105A
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Mr. Farren:

Thank you for your email of August 11 of this year regarding my Freedom of Information Act (FOIA) request number EPA-HQ-2017-008007 to the U.S. Environmental Protection Agency (EPA). You state that my "request does not reasonably define a set of records to search," and you kindly express your willingness to "discuss [my] request and determine how to move forward." You also note that you "are committed to assisting [me] to get access to records [I am] interested in."

In reply, I do not wish to modify my FOIA request as it is quite specific and could be fulfilled even by someone who is not (as you mention) a "subject matter expert." My request is for the email traffic between one specific individual at EPA (Ryan Jackson) and a number of specified other individuals in a specific time period, which is less than five months. Accordingly, simple searches of Mr. Jackson's email(s) for the names of the other specific persons requested should return all responsive records. Under EPA's regulation regarding reasonably specific FOIA requests, my request provides the date range, the author, and the recipient of each record. See 40 C.F.R. § 2.102(c).

Regarding the nature of the "subject area" of my FOIA request, I do not wish to limit my request to specific subject matters within these emails. The requested emails between a senior EPA official and other senior government officials concern the core promise of FOIA, which is to "open agency action to the light of public scrutiny, thus ensuring that citizens know 'what their government is up to.'" *Am. Civil Liberties Union v. U.S. Dep't of Justice*, 655 F.3d 1, 6 (D.C. Cir. 2011) [quoting *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 772, 773 (1989)]. The requested records will shed light on the overall operations of the EPA and the effectiveness of the EPA's leadership. Moreover, the fact that the records requested are likely all in electronic form should make it all the easier for the EPA to comply with my request, given that the only "expertise" necessary for fulfilling the request is likely to be the ability to identify email senders and recipients within a specific date range.

In conclusion, while I understand the pressures that you mention of a limited FOIA staff coping with a large number of requests, I request that this FOIA request be processed as it is reasonably specific and allows the EPA to locate the responsive records with a reasonable amount of effort. Accordingly, I expect a response to my FOIA request within 20 working days, as provided by the law.

Very truly yours,

George E. Clark

From: Farren, Victor <Farren.Victor@epa.gov>

Sent: Friday, August 11, 2017 4:19 PM

To: Clark, George E.

Subject: FOIA EPA-HQ-2017-008007

Mr. Clark,

This email is in regard to your FOIA request, EPA-HQ-2017-008007, submitted to the EPA on June 2, 2017. Your FOIA request was assigned to the Office of the Administrator for processing. The EPA ordinarily responds to requests in the order in which they are received, absent special circumstances such as a grant of expedited processing. Your request was not granted expedited processing. I currently have 76 cases assigned to me that are ahead of you in order of processing. Of these, 19 cases have been granted expedited processing. Please understand that the Office of the Administrator has seen an unprecedented increase in the volume of FOIA requests, but our resources have remained the same.

Despite the challenges noted above, there is a matter we can discuss regarding your request that will make processing more efficient. Your request seeks:

"Email between Ryan Jackson from the date of January 19, 2017 to June 2, 2017, inclusive, and the following persons: Scott Pruitt, Donna Vizian, David Bloom, Lawrence Starfield, Robin Richardson,

Samantha Dravis, Reginald E. Allen, John Reeder, Rick Perry, Ryan Zinke, Brian McCormack, Scott Hommel, Joe Hagin, Rick Dearborn, Katie Walsh, George David Banks, Mary Neumayr, Kathleen Hartnett White, Marty Hall, and Mike Catanzaro.”

As worded, this request does not reasonably define a set of records to search as required by the FOIA and EPA regulations. 5 U.S.C. § 522(a)(3); 40 C.F.R. § 2.102(c). EPA regulations state that a request “should reasonably describe the records you are seeking in a way that will permit EPA employees to identify and locate them. Whenever possible, your requester should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter” and also that “[t]he more specific you are about the records or type of records you want, the more likely EPA will be able to identify and locate records responsive to your request.” 40 C.F.R. § 2.102(c). Records are reasonably described if the description “enable[s] a professional employee of the agency who is familiar *with the subject area of the request* to locate the records with a reasonable amount of effort.” Marks v. United States, 578 F.2d 261, 263 (9th Cir. 1978) (emphasis added).

Your request does not provide a subject matter that would allow a subject matter expert to identify and locate responsive records with a reasonable amount of effort. However, we are committed to assisting you to get access to records you are interested in. Please contact me so that we can discuss your request and determine how to move forward.

Sincerely,

Victor J. Farren
Attorney-Advisor
U. S. Environmental Protection Agency
Office of the Executive Secretariat
(202) 564-0808